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No. ~~958~~ 39

In the
Supreme Court of the United States
OCTOBER TERM, 1966

HANK AVERY,
Petitioner,

v.

MIDLAND COUNTY, TEXAS, et al.,
Respondents.

OPPOSING BRIEF OF RESPONDENT, MIDLAND COUNTY, TEXAS

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According to the Petition herein, the judgment of the state District Court, which was set aside by the state Supreme Court, had granted to Petitioner the relief he sought by directing that the "one-man, one-vote" principle be applied to certain of the political subdivisions of Midland County, Texas, known as County Commissioners Precincts.

Respondent Midland County, Texas, a governmental entity, does not argue for or against a reapportionment or redistricting of its Commissioners Precincts, but must leave that task to Petitioner and the other Respondents.

However, Respondent Midland County, Texas, prays that if a Writ of Certiorari issue to review the judgment of the Supreme Court of Texas and a reapportionment or redistricting be ordered, that any remedy directed to effect such order be such that will not disrupt the orderly operation of the government of Midland County. Therefore, the purpose of this brief is to advise this honorable Court of the limited but vital interests of Midland County as they might be affected upon review by this Court.

OPINIONS BELOW

The majority opinion of the Supreme Court of Texas is unofficially reported at 406 S.W. 2d 422, and appears herein as Appendix A at p. A-1. The dissent is reported at 406 S.W. 2d 429, and appears herein as Appendix B at p. B-1. The unofficial report of the opinion of the Court of Civil Appeals appears at 397 S.W. 2d 919, and appears herein as Appendix C at p. C-1.

JURISDICTION

Respondent Midland County does not take a position concerning jurisdiction to review the judgment of the Supreme Court of Texas.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The following provisions of the Texas Constitution: Article V., Section 8, and Article V., Section 18, Vernon's Annotated Texas Constitution, which are set forth herein in Appendix D at p. D-1.

The following enactments of the Texas Legislature: Article 1908, Vernon's Annotated Texas Statutes, and Article 2.04 of the Texas Election Code, Vernon's Annotated Texas Statutes.

QUESTIONS PRESENTED

If this honorable Court should decide that the 14th Amendment requires it to enter an order directing a reapportionment of the Commissioners Court of Midland County, Texas, or a redistricting of the Commissioners Precincts of Midland County, Texas, then the questions of remedy which concern this Respondent are:

1. Whether such decision of this Court should have a prospective effect only upon the constitutionality of the government of Midland County, Texas;

2. Whether such decision of this Court should provide for the uninterrupted and orderly operation of the government of Midland County, Texas, while such reapportioning or redistricting is being accomplished.

STATEMENT OF THE CASE

Petitioner brought this action against Respondents to set aside an order of the Commissioners Court, which was entered on August 31, 1963, to be effective as of January 1, 1964, dividing the County into four new Commissioners Precincts. (Tr. 345). Petitioner further sought to have said Respondents directed to redistrict said County into Commissioners Precincts having substantially an equal number of people. The Trial Court granted this relief by its final judgment of September 11, 1963 (Tr. 345), setting aside, in

all things, all orders of the Commissioners Court entered prior to September 11, 1963, which divided said County into Commissioners Precincts, and ordered the Commissioners Court to take action not later than its July or August term of 1965, to divide the County into four Commissioners Precincts for the convenience of the people of the County and so that each of said precincts would have substantially the same number of people. (Tr. 348).

By setting aside such orders of the Commissioners Court, the effect of the Trial Court's order would have left Midland County without any Commissioners Precincts until new ones could be established. Also, since the orders of the Commissioners Court that were set aside "in all things" provided for the establishment of Election Precincts (as well as Commissioners Precincts), this would have left the County without Election Precincts until new ones could be established, and would have interfered with the election process.

The subsequent appeal to the Appellate Courts has stayed the effect of the Trial Court's orders. The Supreme Court of Texas ordered a redistricting but directed that it be done "at a time not to interfere with the 1966 general election process" (of Midland County).

ARGUMENT FOR PROTECTION OF THE POSITION OF RESPONDENT MIDLAND COUNTY

This Court in *Reynolds v. Sims* (1964), 377 U.S. 533, 12 L. Ed. 2d 506, 84 S. Ct. 1362, recognized the importance of providing for the orderly operation of government as it might be affected by a redistricting or reapportionment process.

Our Federal Courts and State Courts have likewise recognized this problem and have made provisions for its solution. *Sailors v. Board of Education of County of Kent*, 254 F. Supp. 17 (1966); *State ex rel Sonneborn v. Sylvester*, 132 N.W. 2d 249, 258 (Wisconsin, 1965).

CONCLUSION

Wherefore, Premises considered, Respondent Midland County prays that if the writ of Petitioner be granted and the judgment of the Supreme Court of Texas be reviewed, that upon such review, if a reapportionment or redistricting be ordered, that this Court's decision protect the constitutionality of the government of Midland County, Texas, and provide for the uninterrupted and orderly operation of the government of Midland County while such reapportioning or redistricting is being accomplished.

Respectfully submitted,

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